

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant properly served written claim upon respondent in a timely fashion pursuant to K.S.A. 44-520a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record file, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges personal injury by accident in Sedgwick County, Kansas, during October and/or November, 1991. Claimant continued working for respondent until his discharge on January 29, 1992. Claimant alleged repetitive use syndrome including bilateral carpal tunnel syndrome during this period of time.

Claimant contacted Boeing Central Medical on October 4, 1991, regarding difficulties associated with his right shoulder and right hand. Respondent's Exhibit 2, the Supplementary Record of Occupational Injuries and Illnesses-101C Form, was prepared by respondent and read and signed by claimant on that date. The document indicated claimant was having difficulties with his right hand and shoulder as a result of his work. Subsequent to the completion of this form, claimant was referred to Dr. Brake. Claimant was returned to work at Boeing with restrictions and scheduled for a return appointment on October 11, 1991. Claimant, for unknown reasons, did not attend this follow-up appointment.

Respondent alleges written claim was submitted May 14, 1993, when the claimant filed the Form E-1 with the Workers Compensation Director's office. Claimant argues that pursuant to Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973), the Form E-1 would constitute a timely written claim as the respondent failed to advise claimant the authorization, for claimant to go to Dr. Brake, had been rescinded. The Appeals Board rejects this argument as claimant had no expectation of future medical treatment, especially when considering claimant was scheduled for an exam on October 11, 1991, and failed to attend. Claimant at no time sought additional medical care between October 11, 1991 and his termination in January 1992.

Claimant contends respondent's Exhibit 2, the Supplementary Record of Occupational Injuries and Illnesses, would constitute written claim pursuant to Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973). The court in Ours found that, in order for a document to constitute a written claim for compensation, the court must consider the intention of the parties when the document was created. The court, in construing K.S.A. 44-520a over the years, has taken into consideration the facts and circumstances surrounding each individual case, including the actions of the employer. In this instance there is evidence that claimant, on October 4, 1991, subsequent to completion of the respondent's Exhibit 2 from the regular hearing, was provided medical care for his work-related symptomatology.

Respondent argues that respondent's Exhibit 2 is nothing more than an internal investigation report created in the normal course of respondent's business, as a business record. Respondent also argues, there was no intent on the part of claimant to obtain medical benefits when this document was created. Respondent's contention is rejected on two grounds. First, the document did result in claimant receiving medical treatment on the same day the document was prepared. Secondly, it is significant that Dr. Kenneth D. Zimmerman, in-house company physician employed exclusively at Boeing Central Medical since 1960, when asked about respondent's Exhibit 2, stated clearly that the document was intended as written claim for workers compensation purposes. It is also noteworthy that this Exhibit, created by the respondent, was copied to their safety department and their insurance department.

Respondent argues vehemently that Dr. Zimmerman, being merely a medical doctor and not a legal expert, is mistaken in his description of respondent's Exhibit 2. Nevertheless, respondent placed no evidence in the record to rebut this damaging testimony. Uncontradicted evidence, which is not improbable or unreasonable, cannot be disregarded by the court unless it is shown to be untrustworthy. Such uncontradicted evidence would ordinarily be regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976). The Appeals Board finds the uncontradicted testimony of claimant and Dr. Zimmerman, coupled with the fact claimant was provided medical treatment immediately upon completion of respondent's Exhibit 2, convinces the Appeals Board that respondent's Exhibit 2 is, indeed, written claim for workers compensation purposes in these circumstances.

In so finding, the Appeals Board notes that significant additional issues were in contention at the regular hearing. The Administrative Law Judge, in denying claimant benefits due to claimant's failure to submit timely written claim, did not decide the remaining issues in contention, finding same moot as a result of his decision as to no timely written claim. As such the Appeals Board remands this decision back to the Administrative Law Judge for consideration of the remaining issues yet undecided.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated May 5, 1995, shall be, and is hereby, reversed and this matter is remanded back to the Administrative Law Judge for further proceedings consistent with this opinion.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tom Clarkson, Wichita, Kansas
Frederick L. Haag, Wichita, Kansas
Scott J. Mann, Hutchinson, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director